

## Message Text

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TO SECSTATE WASHDC 8570  
INFO AMEMBASSY BRASILIA  
USMISSION GENEVA  
AMCONSUL RIO DE JANEIRO

UNCLAS SAO PAULO 1643

FROM COMMERCIAL COUNSELOR

GENEVA FOR MTN

E.O. 11652: N/A  
TAGS: ETRD, BEXP, BR  
SUBJECT: BRAZILIAN GOVERNMENT PROCUREMENT POLICY

REF: MEXICO 07927, PARAGRAPH 6

1. IN VIEW OF ITS RELEVANCE TO POSSIBLE BRAZILIAN ADHERENCE TO AN INTERNATIONAL CODE OF GOVERNMENT PROCUREMENT AND THE INCOMPLETENESS OF THE DISCUSSION OF THE SUBJECT IN THE TRADE CENTER SUBGROUP MEETINGS IN BRASILIA, THE EMBASSY IS SUBMITTING THIS REPORT ON THE BRAZILIAN "LAW OF SIMILARS".

2. THE BASIS FOR THE SO-CALLED "LAW OF SIMILARS" IS DECREE-LAW NO. 37 OF NOVEMBER 18, 1966. THE PRIMARY PURPOSE OF WHICH IS TO SPECIFY THE TYPES OF IMPORTS WHICH ARE EXEMPT FROM THE PAYMENT OF IMPORT DUTY. ARTICLE 17 OF THIS DECREE-LAW PROVIDES THAT, WITH CERTAIN EXCEPTIONS (MAINLY IMPORTS BY FOREIGN EMBASSIES AND CONSULATES AND INTERNATIONAL ORGANIZATIONS AND GOODS FINANCED BY 15 YEAR FOREIGN FINANCING), THE EXEMPTION FROM IMPORT DUTY  
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WILL APPLY ONLY TO "PRODUCTS WITHOUT A NATIONAL SIMILAR CAPABLE OF SUBSTITUTING FOR THE IMPORTED." IMPORTS EXEMPTED FROM IMPORT DUTY, SUBJECT TO THE NON-AVAILABILITY OF NATIONAL SIMILARS, INCLUDE IMPORTS BY "THE UNION, THE STATES, THE FEDERAL DISTRICT, AND MUNICIPALITIES, THE AUTARKIES AND OTHER ENTITIES OF DOMESTIC PUBLIC LAW, SCIENTIFIC, EDUCATIONAL, AND SOCIAL WELFARE INSTITUTIONS".

3. THE MEANING OF "NATIONAL SIMILAR" IS DEFINED BY DECREE NO. 61,574 OF OCTOBER, 20, 1967, WHICH SAYS THAT A NATIONAL PRODUCT IS TO BE CONSIDERED SIMILAR TO A FOREIGN PRODUCTS IF IT HAS EQUIVALENT QUALITY AND SATISFACTORY SPECIFICATIONS, A NORMAL DELIVERY PERIOD FOR THE TYPE OF PRODUCT, AND THE PRICE IS NOT HIGHER THAN THE "NORMAL PRICE" OF THE FOREIGN GOOD PLUS THE IMPORT DUTY. THE IPI TAX. THE ICM TAX, THE CUSTOMS CLEARANCE FEES, AND THE MERCHANT MARINE TAX (IN THE CASE OF A SEA SHIPMENT).

4. IN ADDITION TO THE BASIC LEGISLATION DESCRIBED ABOVE, THE GOB HAS BEEN FOLLOWING THE PRACTICE OF ISSUING ANNUAL DECREES FIXING CEILINGS FOR IMPORTS DURING THE COMING YEAR BY "ORGANS AND ENTITIES OF THE FEDERAL ADMINISTRATION, DIRECT AND INDIRECT, AND SUPERVISED FOUNDATIONS". THE DECREE GOVERNING THE CURRENT CALENDAR YEAR IS NO. 81,190 OF JANUARY 5, 1978. LIKE ITS PREDECESSOR, IT SPECIFIES THAT, EVEN WITHIN THE ANNUAL QUOTAS, GOVERNMENT ORGANS AND ENTITIES "MAY ONLY IMPORT, LEASE OR RENT MACHINERY AND EQUIPMENT, APPARATUS, INSTRUMENTS AND VEHICLES OF FOREIGN ORIGIN WHEN A SIMILAR OF NATIONAL MANUFACTURE DOES NOT EXIST."

5. IN THE CASE OF MAJOR PROJECTS WITH FOREIGN FINANCING ON 15 YEARS OR MORE, THE 1966 DECREE-LAW AND THE 1967 DECREE PERMIT THE WAIVING OF THE RULE OF NATIONAL SIMILARS PROVIDED THE FOREIGN SUPPLIER WINS OVER A BRAZILIAN BIDDER ENJOYING A 15 PER CENT PRE-UNCLASSIFIED

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REFERENCE (BASED ON THE CIF VALUE OF THE FOREIGN GOODS). IN FACT, HOWEVER, THIS IS LARGELY SUPERSEDED BY RESOLUTION NO. 9/77 OF MARCH 31, 1977 OF THE COUNCIL FOR ECONOMIC DEVELOPMENT, FOR THE STRENGTHENING OF NATIONAL PRIVATE ENTERPRISE, SECTION VI. D. OF WHICH PROVIDES THAT IN CARRYING OUT MAJOR PROJECTS GOVERNMENT ORGANS AND ENTERPRISES "WILL ADOPT THE PRACTICE OF DETERMINING FIRST THE VOLUME OF EQUIPMENT TO BE SUPPLIED BY NATIONAL INDUSTRY, THEN HOLDING AN INTERNATIONAL COMPETITION (OR OTHER FORM OF LICITATION OR NEGOTIATION) FOR THE PORTION TO BE ACQUIRED ABROAD."

6. EMBASSY COMMENT: IT SHOULD BE CLEAR FROM THE ABOVE THAT THE EXISTENCE OF NATIONAL SIMILAR APPLIES TO VIRTUALLY ALL PURCHASES BY THE GOB OR STATE ENTERPRISES, WHO ACCOUNT FOR A SUBSTANTIAL PORTION OF THE MACHINERY AND EQUIPMENT PURCHASED IN BRAZIL. (THERE ARE A FEW CASES IN WHICH THE LAW OF SIMILARS IS TEMPORARILY WAIVED ON AN EXCEPTIONAL BASIS, SUCH AS FOR PETROBRAS OIL EXPLORATION IN THE CAMPOS BASIN). ON THE FACE OF IT, THE LAW WOULD SEEM TO PERMIT THE GOB TO BUY FOREIGN GOODS IF THE PRICE OF THE BRAZILIAN SIMILAR WAS TOO HIGH, BUT THE HIGH LEVEL OF IMPORT DUTIES PLUS THE 100 PER CENT PRIOR DEPOSIT GIVE DOMESTIC PRODUCTS A VERY HIGH LEVEL OF PROTECTION AND THE EXISTENCE OF THE LAW ITSELF SEEMS TO DISCOURAGE GOVERNMENT AGENCIES AND ENTERPRISES

FROM OLICITING OFFERS FROM FOREIGN SUPPLIER WHEN A NATIONAL SIMILAR DOES EXIST. THIS WOULD SEEM TO BE CONFIRMED BY FINANCE MINISTER SIMONSEN'S OPPOSITION TO A RECENT PROPOSAL BY BENEDICTO MOREIRA, DIRECTOR OF CACEX, THE GOB IMPORT AND EXPORT LICENSING AGENCY, THAT THE "LAW OF SIMILARS" BE ABOLISHED AND THAT IMPORT DUTIES BE RELIED UPON FOR THE NECESSARY PROTECTION OF BRAZILIAN PROCEDURES. SIMONSEN REPLIED THAT SO LONG AS BRAZIL SUFFERING FROM BALANCE OF PAYMENTS DIFFICULTIES THE LAW OF SIMILARS COULD NOT BE DISPENSED WITH. SIMONSEN OBVIOUSLY ASSUMES THAT IMPORT DUTIES ALONE (INCLUDING THE PRIOR IMPORT DEPOSIT) WILL NOT GIVE SUFFICIENT PROTECTION TO DOMESTIC INDUSTRY.

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